

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

2013 NOV 22 AM 11:26

CELA

FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL 13L-13

DATE RECEIVED: June 3, 2013

DATE OF NOTIFICATION: June 17, 2013

DATE ACTIVATED: September 23, 2013

EARLIEST SOL: October 26, 2017

LATEST SOL: October 26, 2017

ELECTION CYCLE: 2012

SOURCE:

Internally Generated

RESPONDENTS:

Central Valley Independent PAC and Ross Allen,
in his official capacity as treasurer

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 434(b)

2 U.S.C. § 434(g)(1)

11 C.F.R. § 104.3(b)

11 C.F.R. § 104.4(c)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Central Valley Independent PAC and Ross Allen, in his official capacity as treasurer (the "Committee") to the Office of General Counsel ("OGC") for failing to timely file a 24-Hour Report to support independent expenditures made on October 26, 2012, totaling \$166,391.00, which the Committee later disclosed on its 2012 30 Post-General Report. See Memorandum from Patricia C. Orrock, Chief Compliance Officer, FEC, to Anthony Herman, General Counsel, FEC (June 3, 2013) ("Referral").

Based on the available information, we recommend that the Commission open a matter under review and find reason to believe that the Committee violated 2 U.S.C. §§ 434(b) and

1 (g)(1)(B) by failing to timely disclose \$166,391 in independent expenditures. Additionally, we
2 recommend that the Commission enter into pre-probable cause conciliation with the Committee
3 and approve the attached conciliation agreement.

4 II. FACTUAL AND LEGAL ANALYSIS

5 A. Factual Background

6 The Committee is a multicandidate, independent expenditure-only committee that is not
7 affiliated with any candidate or elected official. *See* Statement of Organization (Oct. 11, 2012).
8 Ross Allen is the Committee's treasurer.

9 In late October 2012, the Committee made \$210,929 in independent expenditures for
10 media buys opposing federal candidate James "Jim" Costa, the incumbent Democratic candidate
11 for the House of Representatives in California's 16th Congressional district, and supporting
12 Republican candidate Brian Whelan.¹ The Committee timely filed 24-Hour Reports for
13 independent expenditures made on October 23 and 24, 2012 totaling \$44,538, *see* 24-Hour
14 Independent Expenditure Report (Oct. 24, 2012); *id.* (Oct. 25, 2012), but failed to timely file a
15 24-Hour Report for additional independent expenditures made on October 26, 2012, totaling
16 \$166,391.

17 On December 6, 2012, the Committee's attorney contacted the Reports Analysis Division
18 analyst and inquired as to how it should handle its failure to file a 24-Hour Report for the
19 \$166,391 in independent expenditures made on October 26, 2012. The analyst advised the
20 Committee to file the 24-Hour Report as soon as possible, to be certain to disclose the
21 independent expenditures in its 2012 30 Day Post-General Report, and to file a Miscellaneous

¹ Specifically, the Committee made one independent expenditure to SRCP Media, Inc. on October 23, 2012 for \$30,929 for a media buy opposing Jim Costa and supporting Brian Whelan, one independent expenditure to SRCP Media, Inc. on October 24, 2012 for \$13,609 for a media production opposing Jim Costa, and two independent expenditures to SRCP Media, Inc. on October 26, 2012 for \$166,062 and \$329 for a media buy opposing Jim Costa and supporting Brian Whelan and related shipping costs, respectively. *See* 2012 30 Day Post-General Report at 8-9.

1 Electronic Submission ("Form 99") to explain why the 24-Hour Report for the October 26, 2012
2 independent expenditures had not been timely filed. See Referral at Attach. 3. On December 6,
3 2012, the Committee filed one 24-Hour Report to disclose the \$166,391 in independent
4 expenditures that were made on October 26, 2012, but not previously disclosed, and filed a 2012
5 30 Day Post-General Report covering the period from October 18, 2012 through November 26,
6 2012, which included a Schedule E that disclosed the independent expenditures made on October
7 23, 24 and 26, 2012. See 2012 30 Day Post-General Report at 8-9 (Dec. 6, 2012).

8 On February 6, 2013, a Request for Additional Information ("RFAI") was sent to the
9 Committee referencing the 2012 30 Day Post-General Report and the Committee's failure to
10 timely file the required 24-Hour Report regarding the October 26, 2012 independent
11 expenditures. Referral at 2.²

12 On March 13, 2013, the Committee filed a Form 99 in response to the RFAI. The Form
13 99 stated, in part:

14 In this case, [Central Valley Independent PAC (CVI)] promptly and sua sponte
15 reported this [independent expenditure (IE)] on a 24 hour report as soon as
16 information that could require the report became available. Pursuant to the
17 Commission's Statement of Policy Regarding Treasurers' Best Efforts from 2007
18 (Notice 2007 13, 72 FR 31438), CVI used its best efforts and took all reasonable
19 steps to expeditiously file this 24 hour IE report.

20
21 CVI presently has minimal funds remaining in its account, and it is no longer
22 soliciting contributions or making expenditures. It is currently in the process of
23 terminating.

24
25 Referral at 2.

26 After receiving a message from the RAD Analyst that the Committee might be referred
27 for further action, the Committee's bookkeeper contacted RAD. See Referral at 3-4. The

² The RFAI identified one independent expenditure, totaling \$166,062, for which the required 24-Hour Report had not been timely filed. *Id.* The Referral states that the RFAI inadvertently omitted a second independent expenditure totaling \$329.00 that should also have been included in the 24-Hour Report that the Committee failed to file. See Referral, Attach. at 2.

1 bookkeeper explained that the Committee had hired an attorney to assist with compliance who
2 only informed the Committee of the requirement for the 24-Hour Report after the deadline for its
3 filing. *Id.* The bookkeeper asked how she could submit an explanation to be placed on the
4 public record. *Id.* The analyst informed the bookkeeper that the Committee could file a Form 99
5 to clarify the public record if it so chose. *Id.*

6 On March 25, 2013, the Committee filed another Form 99 which stated, in full:

7
8 We had a late 24 hour filing due to the fact that the attorney that we hired to fill
9 out these reports did not advise us of the due dates and the requirements. He was
10 advised to fill out the first form and he did and he was instructed to fill out the
11 forms going forward. Instead he told us about the due date after it had passed.

12
13 Referral at 4. RAD received no further communication from the Committee regarding this
14 matter. *Id.*

15 On June 3, 2013 RAD referred the Committee to OGC for failing to timely file one 24-
16 Hour Report to support two independent expenditures totaling \$166,391.00, which the
17 Committee disclosed on its 2012 30 Post-General Report. *See* Referral. Upon receipt of the
18 Referral, OGC notified the Committee about this matter on June 17, 2013. *See Agency*
19 *Procedure for Notice to Respondents in Non-Complaint Generated Matters*, 74 Fed. Reg. 38,617
20 (Aug. 4, 2009). We have not received a response to the notification.

21 **B. Legal Analysis**

22 The Federal Election Campaign Act of 1971, as amended (the "Act"), requires
23 committee treasurers to file reports of disbursements in accordance with the provisions of
24 2 U.S.C. § 434. 2 U.S.C. § 434(b)(4); 11 C.F.R. § 104.3(b). The Act defines "independent
25 expenditure" as an expenditure by a person expressly advocating the election or defeat of a
26 clearly identified federal candidate that is not made in concert or cooperation with or at the

1 request or suggestion of such candidate, the candidate's authorized political committee, or their
2 agents, or a political party committee or its agents. 2 U.S.C. § 431(17).

3 Every political committee that makes independent expenditures must report those
4 expenditures in its regularly scheduled disclosure reports in accordance with 11 C.F.R.
5 § 104.3(b)(3)(vii). 11 C.F.R. § 104.4(a). Such a political committee must disclose on Schedule
6 E the name of a person who receives any disbursement during the reporting period in an
7 aggregate amount or value in excess of \$200 within the calendar year in connection with an
8 independent expenditure by the reporting committee. The report also must disclose the date,
9 amount, and purpose of any such independent expenditure and include a statement that indicates
10 whether such independent expenditure is in support of or in opposition to a candidate, as well as
11 the name and office sought by such candidate. 2 U.S.C. § 434(b)(6)(B)(iii); 11 C.F.R.
12 §§ 104.3(b)(3)(vii), 104.4(a).³

13 In certain instances, a political committee is required to make additional disclosures of its
14 independent expenditures prior to the disclosures on the committee's regularly scheduled reports.
15 A political committee that makes or contracts to make independent expenditures aggregating
16 \$1,000 or more in connection with a given election after the 20th day, but more than 24 hours
17 before the date of an election, is required to file a report describing the expenditures within 24
18 hours. 2 U.S.C. § 434(g)(1)(A); 11 C.F.R. § 104.4(c). These 24-Hour Reports must be filed
19 within 24 hours "following the date on which a communication that constitutes an independent
20 expenditure is publicly distributed or otherwise publicly disseminated." 11 C.F.R. § 104.4(c). A
21 political committee must file additional reports within 24 hours after each time it makes or

³ Independent expenditures of \$200 or less do not need to be itemized, though the committee must report the total of those expenditures on line (b) of Schedule E. *Id*

1 contracts to make independent expenditures aggregating an additional \$1,000. 2 U.S.C.

2 § 434(g)(1)(B); 11 C.F.R. § 104.4(c).

3 As set forth in the Referral, the Committee did not comply with the Act's reporting
4 requirements when it failed to timely file a 24-Hour Report to support \$166,391 in independent
5 expenditures made on October 26, 2012, which the Committee disclosed on its 2012 30 Post-
6 General Report. We therefore recommend the Commission open a MUR and find reason to
7 believe that the Committee violated 2 U.S.C. §§ 434(b) and (g)(1)(B).

11/22/13 11:00 AM

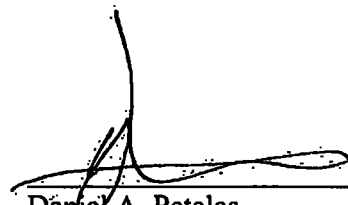
1
2
3
4
5

6 **IV. RECOMMENDATIONS**

- 7 1. Open a MUR.
- 8 2. Find reason to believe that Central Valley Independent PAC and Ross Allen, Jr. in
9 his official capacity as treasurer violated 2 U.S.C. §§ 434(b) and (g)(1)(B).
- 10 3. Approve the attached Factual and Legal Analysis.
- 11 4. Enter into conciliation with Central Valley Independent PAC and Ross Allen, Jr.
12 in his official capacity as treasurer, prior to a finding of probable cause to believe.
13
- 14 5. Approve the attached conciliation agreement.
- 15 6. Approve the appropriate letter.

16
17
18
19
20
21
22
23
24

11/22/13
Date



Daniel A. Petalas
Associate General Counsel

